

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2001-24-C - ORDER NO. 2001-422
MAY 7, 2001

| | | |
|---|---|--------------------|
| IN RE: Application of Texas HomeTel, Inc. d/b/a |) | ORDER |
| 877-RING AGAIN for a Certificate of Public |) | GRANTING |
| Convenience and Necessity to Provide Local |) | CERTIFICATE FOR |
| Exchange Telecommunications Services in |) | LOCAL SERVICES AND |
| the State of South Carolina and for Flexible |) | FOR FLEXIBLE |
| Regulation. |) | REGULATION |

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Texas HomeTel, Inc., d/b/a 877-RING AGAIN ("Texas HomeTel") or the "Company") requesting a Certificate of Public Convenience and Necessity to provide local exchange telecommunications services in the State of South Carolina. In addition, the Company requests that the Commission regulate its local service in accordance with the principles and procedures established for flexible regulation by Order No. 98-165 in Docket No. 97-467-C. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2000) and Section 253 of the Telecommunications Act of 1996.

By letter, the Commission's Executive Director instructed Texas HomeTel to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The proposed Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. Texas HomeTel complied with this instruction and provided the Commission with proof of publication

of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition (“SCTC”) on February 23, 2001.

On March 16, 2001, counsel for SCTC filed with the Commission a Stipulation in which Texas HomeTel stipulated that it would seek authority in non-rural local exchange (“LEC”) service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until Texas HomeTel provided written notice of its intent prior to the date of the intended service. Texas HomeTel also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. Texas HomeTel agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to Texas HomeTel to provide local services provided the conditions contained in the Stipulation are met. The Stipulation was entered into the evidence of the hearing, and the Staff requested that the Stipulation be approved by the Commission. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on April 18, 2001, at 11:30 a.m., in the Commission’s Hearing Room. The Honorable William Saunders, Chairman, presided. Texas HomeTel was represented by John J. Pringle, Jr., Esquire. Adelaide D. Kline, Staff Counsel, represented the Commission Staff. Vivian B. Dowdy, Auditor, Utilities Department, and Colanthia B. Alvarez, Rates Analyst, Utilities Department, testified on behalf of the Commission Staff.

Keith Edward Carter, President and Chief Executive Officer of Texas HomeTel, appeared and testified in support of the Application. Mr. Carter testified that prior to forming Texas

HomeTel, he established an automobile dealership which he still owns and operates. He testified he oversees the day to day management of Texas HomeTel, manages personnel and legal matters and all interconnection agreements. Upon receiving certification from the Commission, Texas HomeTel seeks to provide resold local exchange telecommunication services in the service areas of the non-rural local exchange (LECs) in the State of South Carolina. Texas HomeTel will provide certain local services that are available for resale by the underlying incumbent local exchange carriers (ILECs).

According to the record, Texas HomeTel is a privately held Texas corporation that has received authorization to transact business within the State of South Carolina. It was incorporated on September 9, 1997, has twenty employees and is headquartered in Dallas, Texas. Mr. Carter testified that Texas HomeTel is currently providing services to 4,500 customers in the states of Texas, Louisiana and Oklahoma, and recently received certification in the states of Missouri and Tennessee. He further stated his Company has entered into an interconnection agreement with BellSouth on a nine state regional basis; will file that interconnection agreement with this Commission.

Mr. Carter addressed Texas HomeTel's managerial, financial, and technical ability to provide local exchange telecommunications services in South Carolina. Mr. Carter explained his background and experience in the telecommunications industry, and the experience and background of other key management team members. Mr. Carter stated that he and two of his employees have received training in the LENS program from BellSouth. He further testified that eighteen of Texas HomeTel's twenty employees speak Spanish. The record reveals that Mr. Carter received a B.B.A. degree from Southern Methodist University, Dallas, Texas, in 1976. Tom G. McElroy is Secretary/Treasurer. Mr. McElroy has been with Texas HomeTel since

August of 1998. He received a B.B.A. in general business from the University of Texas at Austin in 1979. Charles Cox is HomeTel's Vice President. Mr. Cox is a twenty percent owner of the Company. He retired from General Motors Parts Division in 1990, after thirty two years, to go into private business. Mr. Carter will be the Company's regulatory, financial and customer service contact person.

The record reveals that Texas HomeTel will bill its customers directly. The Company's name, address and toll-free telephone number appear on the bill. Additionally, the Company will operate a customer service department. The toll-free telephone number is 1-(888)256-8843. Mr. Carter testified that the toll-free customer service number is handled by a live voice from 8:30 a.m. until 7:00 p.m. central standard time Monday through Friday, and from 9:00 a.m. until 4:00 p.m. on Saturday.

Mr. Carter stated that his Company intends to use television and newspaper advertising in South Carolina. He said the monthly rate for residential prepaid local telephone service is currently \$34.00; at this time his Company does not plan to market its services to business customers. He said his Company does not intend to do any telemarketing but is aware of the Commission's marketing guidelines. Mr. Carter offered that Texas HomeTel will market its services in the major metropolitan areas of South Carolina under its d/b/a 877-RING AGAIN. Mr. Carter said all twenty company employees are trained to handle sales calls. He stated that Texas HomeTel's customers are required to sign a letter of authorization if they wish to switch their services from another provider to Texas HomeTel. Further, he stated his Company does not process orders for service until the service is prepaid.

Regarding the Company's financial ability to offer telecommunications services in South Carolina, Mr. Carter testified that Texas HomeTel's financial ability has been evidenced by its

financial statements that were submitted with the Application. He said that although the Company lost \$140,000 during its first year of operations because of start-up expenses, it made a profit last year of \$115,000. He opined that Texas HomeTel is in good financial position to offer services in South Carolina because it is financially able and has no long term debt.

Vivian B. Dowdy, Commission Staff witness, testified that the Company submitted a balance sheet with its Application, dated September 30, 2000, which indicated the Company had cash that made up 75% of its total assets as of September 30, 2000. She testified that the Company's financial information indicates the Company appears to be financially weak with no long term debt. She further stated that the Company had a current ratio of .78 which means there were not enough current assets to meet all the current liabilities as of the date of the statement. Ms. Dowdy testified that in order for the Company to be able to continue to operate, it will have to have a source for working capital. She said such source could come from continued profits, long-term debt or additional paid in capital by the owners. The Company requested the Commission's permission to be exempt from any record-keeping rules or regulations that might require the Company to maintain its financial records in conformance with the Uniform System of Accounts. According to the record, Texas HomeTel currently maintains its book of accounts in accordance with the Generally Accepted Accounting Principles ("GAAP").

Ms. Alvarez presented testimony to the Commission on the findings of the Utilities Department with respect to Texas HomeTel's Application for a Certificate of Public Convenience and Necessity. According to Ms. Alvarez, Texas HomeTel seeks authority to resell local exchange telecommunications services within South Carolina. Texas HomeTel requested a waiver of S.C.Code Ann. Regs. 103-631 (1976) so that the Company will not be required to publish local exchange directories. According to the record, Texas HomeTel will make

arrangements with the incumbent local exchange carriers whereby the names of Texas HomeTel's customers will be included in the directories published by the incumbent local exchange carriers. At the hearing, the Company additionally requested a waiver of 26 S.C.Code Ann. Regs. 103-610 (1976) so that Texas HomeTel can maintain its records outside of South Carolina. The Company wishes to maintain its books and records at its headquarters in Texas. Additionally, Texas HomeTel requested a waiver of 26 S.C.Code Ann.Reg. 103-612.2.3 regarding provision of a map reflecting the geographic operating area(s).

The testimony reveals Texas HomeTel's presence in South Carolina as a telecommunications service provider will have a positive effect on the public interest. Upon receiving certification from the Commission, Mr. Carter testified Texas HomeTel will abide by and comply with the Commission's rules and regulations and Commission Orders in its operations in South Carolina. Further, the testimony reveals Texas HomeTel has never had an application for a certificate of public convenience and necessity denied. Further, he testified Texas HomeTel will comply with South Carolina laws and with all applicable rules and regulations of the Commission. He agreed to make all tariff changes as suggested by the Commission Staff and additionally agreed to include the email address and telephone number on each tariff page. He agreed to file a copy of Texas HomeTel's Bill Form with the final tariff as required by this Commission's regulations. Finally, Mr. Carter testified Texas HomeTel had not provided any intrastate telecommunications services within the State of South Carolina.

Upon consideration of the application and the record from the hearing, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Texas HomeTel is organized as a corporation under the laws of the State of Texas and has received a certificate from the South Carolina Secretary of State to transact business within South Carolina as a foreign corporation.

2. Texas HomeTel wishes to provide local exchange services within the State of South Carolina.

3. The Commission finds that Texas HomeTel possesses the technical, financial, and managerial resources sufficient to provide the service requested. S.C. Code Ann. §58-9-280(B)(1) (Supp. 2000).

4. The Commission finds that Texas HomeTel's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp. 2000).

5. The Commission finds that Texas HomeTel will support universally available telephone service at affordable rates. S.C. Code Ann. §58-9-280(B)(4) (Supp. 2000).

6. The Commission finds that Texas HomeTel will provide services which will meet the service standards of the Commission. S.C. Code Ann. §58-9-280(B)(2) (Supp. 2000).

7. The Commission finds that the provision of local exchange service by Texas HomeTel "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 2000).

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Texas HomeTel to provide competitive intrastate local exchange services within the State of South Carolina. The terms of

the Stipulation between Texas HomeTel and the SCTC (attached hereto as Exhibit 1) are approved and adopted as a portion of this Order. Any proposal to provide local services to rural service areas is subject to the terms of the Stipulation. In accordance with the Stipulation, Texas HomeTel may not provide any local service to a customer located in a rural incumbent LEC's service area, unless or until Texas HomeTel provides such rural incumbent LEC and the Commission, written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. The Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while it conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon a showing of good cause. It is specifically provided that all rights under Federal and State law are reserved to the rural incumbent LECs, and this Order in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications as they may be entitled. If, after notice from Texas HomeTel that it intends to serve a customer located in a rural incumbent LEC's service area, and the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or if the Commission institutes a proceeding of its own, no service may be provided by Texas HomeTel in a rural incumbent LEC's service area pursuant to this Order without prior and further Commission approval.

2. Texas HomeTel shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. Any proposed change in the rates reflected in the tariff for local services which would be applicable to the general body of the

Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2000).

3. Texas HomeTel shall resell or provide the services of only those companies authorized to provide telecommunications services in South Carolina by this Commission.

4. Texas HomeTel shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

5. Texas HomeTel shall file annual financial information in the form of annual reports and gross receipt reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Texas HomeTel shall keep such financial records on an intrastate basis as needed to comply with the annual report and gross receipt filings. The form the Company shall use to file annual financial information with the Commission can be found at the Commission's web site at www.psc.state.sc.us/forms. This form is entitled "Annual Report for Competitive Local Exchange Carriers". Additionally, pursuant to the Commission's regulations, the Company shall file a CLEC Service Quality Quarterly Report with the Commission. The proper form for this report is Form #110 and can be found at www.psc.state.sc.us/forms/default.htm.

6. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs Texas HomeTel to contact the appropriate authorities regarding 911 service in the

counties and cities where the Company will be operating. Contact with the appropriate 911 service authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association (“SC NENA”) with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, Texas HomeTel shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company’s operations as required by the 911 system.

7. The Company shall, in compliance with Commission regulations, designate and maintain authorized utility representatives who are prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the names of the authorized representatives to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

Texas HomeTel shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. (Attachment A shall be utilized for the provision of this information to the Commission.) Further, the Company shall promptly notify the Commission in writing if the representatives are replaced. Texas HomeTel shall also file with the Commission a copy of its general Bill Form as required by S.C. Code Regs. 103-612.2 and 103-622 (1976 and Supp. 2000).

8. Texas HomeTel requested waivers from certain Commission regulations and requirements. Specifically, Texas HomeTel requested waivers from (1) the requirement found in Rule 103-631 to publish and distribute local exchange directories, (2) the requirement to keep its books and records in South Carolina and (3) the requirement regarding provision of a map reflecting the geographic operating area(s). The Company also requested permission to exempt it from any requirement to maintain books and records in compliance with the USOA. The Commission grants the request for waiver from the requirement to publish directories as Texas HomeTel has indicated that it will contract with the incumbent local exchange company to include the customers of Texas HomeTel in the directory listing of the ILEC directory. The Commission also grants the Company's request for a waiver of the requirement that books and records be kept in South Carolina. Texas HomeTel has permission to maintain its books and records at its corporate headquarters in Texas. Further, the Commission grants Texas HomeTel's request that it be allowed to keep its books and records in accordance with GAAP rather than the USOA. The Commission grants the request for a waiver of the regulation which requires that Texas HomeTel file a map of their service area(s). Texas HomeTel is directed to comply with all Commission regulations, unless a regulation is specifically waived by the Commission.

MAY 7, 2001

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9. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:


Executive Director

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 2001-24-C

Re: Application of Texas HomeTel, Inc. d/b/a)
877-Ring Again for a Certificate of Public)
Convenience and Necessity to Provide Local)
Exchange Telecommunications Services in)
the State of South Carolina)
_____)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and Texas HomeTel, Inc. d/b/a 877-Ring Again ("Texas HomeTel") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose Texas HomeTel's Application. SCTC and Texas HomeTel stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Texas HomeTel, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.

2. Texas HomeTel stipulates and agrees that any Certificate which may be granted will authorize Texas HomeTel to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.

3. Texas HomeTel stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.

4. Texas HomeTel stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless and until Texas HomeTel provides such rural incumbent LEC and the Commission with written

notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, Texas HomeTel acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. Texas HomeTel stipulates and agrees that, if Texas HomeTel gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then Texas HomeTel will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. Texas HomeTel acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and Texas HomeTel, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

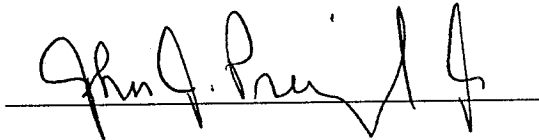
8. Texas HomeTel agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available

telephone service at affordable rates.

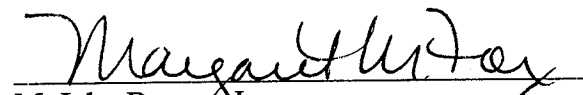
9. Texas HomeTel hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 8th day of March,
2001.

Texas HomeTel, Inc. d/b/a 877-Ring Again:

A handwritten signature in dark ink, appearing to read "John F. Bowen, Jr.", written over a horizontal line.

South Carolina Telephone Coalition:

A handwritten signature in dark ink, appearing to read "Margaret M. Fox", written over a horizontal line.

M. John Bowen, Jr.
Margaret M. Fox
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

Attorneys for the South Carolina Telephone
Coalition

ATTACHMENT A

South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Heath Springs Telephone Company Inc.
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

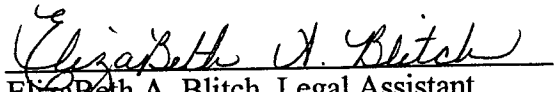
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Convenience and Necessity to Provide Local)
Exchange Telecommunications Services in)
the State of South Carolina)
_____)

**CERTIFICATE OF
SERVICE**

I, ElizaBeth A. Blich, do hereby certify that I have this date served one (1) copy of the foregoing Stipulation upon the following party of record by causing said copy to be deposited with the United States Mail, first class postage prepaid to:

John J. Pringle, Jr., Esquire
Beach Law Firm, P.A.
Post Office Box 11547
Columbia, South Carolina 29211-1547.


ElizaBeth A. Blich, Legal Assistant
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Columbia, South Carolina 29211
(803) 799-9800

March 16, 2001

Columbia, South Carolina